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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,496	03/11/2004	Michael Kwiecien	00216-618001	6314
26161	7590	09/01/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			ALIE, GHASSEM	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 09/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/798,496	KWIECIEN, MICHAEL	
	Examiner	Art Unit	
	Ghassem Alie	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 11, 17, 23, and 37-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-16, 18-22, and 24-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/22/04-04/07/06</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Applicant's election of Group I (claims 1-29 and 33-36) and Species III (Fig. 3) in Group A, Species II in Group B, and Species I in Group C is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 11 and 37-46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. The election was made **without** traverse.

Claims 17 and 23 are further withdrawn from consideration, since claim 17 reads on the non-elected Species VI (Fig. 5) and claim 23 reads on the non-elected Species XII (Fig. 11).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 7, line 5, "or other minerals" renders the claim indefinite because it is not clear what applicant considered to be mineral and what minerals are covered by this term. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form

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the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1,2, 3, 26, 27, 30, 31, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Perricone et al. (5,776,473), hereinafter Perricone. Regarding claims 1,2, 3, 26, 27, 30, 31, and 33, Perricone teaches a wet shaving system including a skin engagement portion including a shaving aid composite. Perricone also teaches a shaving aid matrix including a polymer and a shaving aid. See col. 3, lines 63-67 and col. 4, lines 1-5 in Perricone. Perricone also teaches that the shaving aid matrix includes a plurality of exfoliating elements. It should be noted that the polymer includes alpha-hydroxy acid or derivatives thereof, which are considered to be exfoliating elements, since they enhance exfoliation. See col. 1, lines 66-67 and col. 2, lines 1-4 in Perricone.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5, 13, 14, 16, 18-22, 24, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perricone in view of Tseng et al. ((5,956,848), hereinafter Tseng.

Regarding claims 5, 13, 14, 16, 18-22, 24, and 28, Perricone teaches everything noted above except that the skin engagement portion includes a second section comprising a polymer.

However Tseng teaches a skin-engaging portion includes a first section and a second section

having polymer. It would have been obvious to a person of ordinary skill in the art to provide the skin-engaging portion Perricone's wet shaving system with a second section, since the use of a skin engagement portion having a first layer and a second layer is a matter of design choice and it is well known in the art to form the skin-engaging portion from a first layer or a multi-layers.

9. Claims 1-10, 12-16, 18-22, and 24-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng et al. (5,956,848), hereinafter Tseng, in view of Wdpwik (5,756,081). Regarding claim 1, Tseng teaches a wet shaving system 10 including a skin engagement portion including a shaving aid composite 14. Tseng also teaches a shaving aid matrix 46 including a polymer and a shaving aid. See col. 3, lines 8-15. Tseng does not explicitly teach that the shaving aid matrix 46 includes a plurality of exfoliating elements. However, Wdowik teaches a plurality of exfoliating elements that is used with a shaving aid composite which could be in a solid form. See col. 2, lines 55-61 and col. 3, lines 22-60 in Wdowik. It should be noted that the shaving aid composite in Tseng is solid, and Wdowik teaches that the exfoliating elements can be used in a solid shaving aid composite. It would have been obvious to a person of ordinary skill in the art to provide Tseng's shaving aid matrix with a plurality of exfoliating elements, as taught by Wdowik, in order to enhance exfoliation of the dead skin and removal of grease and oils.

Regarding claims 2-4 and 13-14, Tseng teaches everything noted above including that the polymer comprises of a water-insoluble polymer which could be polyethylene. Tseng also teaches that the shaving aid could have a colorant. See col. 3, lines 16-37 in Tseng.

Tseng also teaches that the shaving aid includes polyethylene oxide and vitamin E. See col. 3, lines 37-65 in Tseng.

Regarding claim 5, Tseng, as modified by Wdowik, teaches everything noted above including a first section that is considered to be shaving aid matrix 46 and a second section 44, 48 having a second polymer. Tseng also teaches that the first section or second section further includes a shaving aid.

Regarding claims 6-7, as best understood, Tseng, as modified by Wdowik, teaches that the exfoliating elements include polymer and mineral oil. It should be noted that the abrasive particles in Wdowik could be polymeric particles. See col. 3, lines 55-60. It should be noted that the use of other abrasive elements or exfoliating elements are well known in the art such as taught by Ruben (6,461,599). See col. 2, lines 35-50 in Ruben.

Regarding claims 8-10 and 11, Tseng, as modified above, does not expressly teach that the exfoliating elements are in a form of microcapsules having an external surface and an internal surface. However, Official Notice is taken that the use of shaving aid in a form microcapsules are well known in the art. It appears that claims 8-10 and 12 are directed to a completely different Species than the rest of the claims. It should be noted that a further restriction requirement maybe applied to the claims in next Office Action.

Regarding claim 15, Tseng, as modified by Wdowik, teaches everything noted above, including that the exfoliating elements comprises a colorant. It should be noted when the polymer or the shaving aid includes a colorant the exfoliating elements which are embedded into the polymer also naturally include a colorant. It addition, Wexler et al. (6,295,733) teaches elements 21 that are embedded into a polymer include a colorant.

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Regarding claims 16, 18-22, and 25-36, Tseng, as modified by Wdowik, teaches all the limitation set forth in those claims. It should be noted that Tseng teaches that one of he section includes a water-insoluble polymer, both sections comprise of a shaving aid, the first section is on the top of the second section, the first section and second section also could be different color as being formed from a different material, at least one of the first section or the second section includes a colorant, and the shaving aid and the exfoliating element are disposed in a single layer.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Leaseburg (6,532,667), Etheredge, III (4,872,263), Wexler et al. (6,295,733), Kwiecien et al. (6,301,785), Oritz et al. (5,689,883), and Vreeland (5,345,680) teach a wet shaving system.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information

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about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GA/ga

August 19, 2006

A handwritten signature in black ink, appearing to read 'B. Ashley', with a long horizontal flourish extending to the right.

BOYER D. ASHLEY
SUPERVISORY PATENT EXAMINER